IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

MELVIN L. CRAWLEY, **6611 Baronscourt Loop** **Dublin, OH 43016** **PLAINTIFF,** **v.** **NORFOLK SOUTHERN CORP.** **Three Commercial Place** **Norfolk, VA 23510** **DEFENDANT.**	**CIVIL ACTION NO._________** **[Jury Trial Demanded]** ***Electronically Filed***

COMPLAINT

I. INTRODUCTION

1. Plaintiff Melvin Crawley ("Plaintiff" or "Crawley") brings this action against Norfolk Southern Corporation ("Norfolk Southern" or "Defendant") to redress race discrimination and retaliation in employment. Plaintiff brings this action against Defendant pursuant to Title VII of the 1964 Civil Rights Act, *as amended*, 42 U.S.C. § 2000e, *et seq.* ("Title VII") and the Civil Rights Act of 1866, *as amended*, 42 U.S.C. § 1981 ("§ 1981"). To redress Defendant's racial discrimination and retaliation against him, Plaintiff seeks: declaratory and injunctive relief; back pay; front pay; placement into a higher-paying position that

he would hold but for Defendant's discrimination; compensatory, nominal, and punitive damages; attorneys' fees, costs, and expenses; and any other legal or equitable relief as the Court deems appropriate.

II. JURISDICTION AND VENUE

2. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1332, 1343(a)(4), 2201, 2202, 42 U.S.C. § 1981, and Title VII of the 1964 Civil Rights Act, as amended, 42 U.S.C. § 2000e, *et seq.*

3. Venue is proper in the Middle District of Pennsylvania pursuant to 42 U.S.C. § 2000e-5(f)(3) because Plaintiff was denied promotions to positions at Defendant's Harrisburg location, thus the Plaintiff would have worked in the Middle District of Pennsylvania were it not for unlawful employment practices challenged herein.

III. CONDITIONS PRECEDENT TO SUIT

4. Plaintiff has fulfilled all conditions precedent to the institution of this action under Title VII. Specifically, Plaintiff filed Charge of Discrimination #437-2006-00177 with the United States Equal Employment Opportunity Commission on or about January 16, 2006, within 300 days of the last discriminatory action taken against him, and filed an amended Charge on or about March 3, 2006. Crawley is filing this Complaint within ninety (90) days of receipt of his Notice of

Right To Sue from the EEOC. Plaintiff's claims arising under 42 U.S.C. § 1981 do not require administrative exhaustion.

IV. PARTIES

5. **Plaintiff Melvin Crawley** is an African-American citizen of the United States and a resident of the State of Ohio. Crawley has worked for Defendant for approximately 28 years, and currently holds the position of Terminal Superintendent at Defendant's Columbus, Ohio location.

6. **Defendant Norfolk Southern Corporation**, is a Norfolk, Virginia based company that controls a major freight railroad, Norfolk Southern Railway Company. The railway operates approximately 21,200 route miles in 22 eastern states, the District of Columbia and Ontario, Canada, and maintains rail classification yards in 28 locations, including the Greater Harrisburg, Pennsylvania area. The railway serves all major eastern ports and connects with rail partners in the West and Canada. Defendant employs more than 30,000 employees and contractors worldwide, and reported railway operating revenues in the 2005 fiscal year of $8.5 billion. Norfolk Southern maintains operations in the Middle District of Pennsylvania, including but not limited to: the Harrisburg Intermodal Yard and the Rutherford Intermodal Yard, both situated in Dauphin County, Pennsylvania; and the Enola Yard, a classification yard situated in Cumberland County,

Pennsylvania. Defendant meets the definition of "employer," and is therefore subject to suit, under Title VII and § 1981.

V. STATEMENT OF FACTS

7. Crawley began his employment with Defendant in June 1979 as a Management Trainee at Defendant's Roanoke, Virginia location. Since that time, Crawley has held various managerial positions in various cities, rising to the position of Division Superintendent in February 2000. Crawley held the Division Superintendent position first in Birmingham, Alabama, and later in Roanoke, Virginia, until he was unlawfully demoted to his current position as a Terminal Superintendent in Columbus, Ohio in November 2005.

8. During Crawley's employment, Defendant subjected Crawley to unequal terms and conditions of employment with regard to his compensation, unlawful and disparate treatment in the form of a discriminatory demotion, and deprived Crawley the opportunity to be promoted into higher paying positions that were eventually awarded to less qualified white individuals.

9. In approximately August 2003, while working as a Division Superintendent in Birmingham, AL, Defendant informed Crawley that he was being transferred to a similar position in Roanoke, Virginia.

10. Defendant's policies, practices, and/or procedures provided that managerial employees in positions such as the one Crawley held would receive a

pay increase if they were directed to transfer to a new city. Shortly after Crawley was informed that he would be transferred to Roanoke, he asked Defendant's agents if he would receive this pay raise. Defendant informed Crawley that he would not receive a pay increase. Upon information and belief, similarly situated white employees directed to transfer by Defendant did receive this pay increase.

11. In October 2005, Defendant demoted Crawley from his Division Superintendent position in Roanoke, Virginia, to the position of Terminal Superintendent in Columbus, Ohio. This demotion followed an incident in which an employee who reported to Crawley's subordinates expressed that she needed time off from work. There were questions raised whether her time off from work should have been listed as "reportable" to the Federal Railroad Administration ("FRA"). Despite Crawley's proper handling of the incident and the fact that the incident was not "reportable," Crawley was unfairly and illegally demoted due to his race.

12. Prior to the demotion, Defendant had never disciplined Crawley for any reason. Indeed, Crawley had received numerous awards and commendations for his on-the-job performance. For example, in 2004, the Virginia Division that Crawley oversaw was the top division in the company in terms of safety performance, winning corporate awards from Defendant's Chief Executive Officer.

13. By comparison, several white employees have presided over actual safety and/or reporting violations of Defendant's and/or the FRA's policies, yet Defendant failed to demote – and in many instances failed to discipline whatsoever – these employees. Indeed, Defendant later promoted several of these white employees, including Brig Burgess, into higher paying positions for which Crawley had also expressed interest.

14. As a result of the demotion, Crawley received a decrease in salary. In addition, while Crawley's benefits were partially "grandfathered" following his demotion, Crawley receives substantially less compensation in the form of cash bonuses and stock options than he received prior to his demotion. The amount he receives in cash bonuses and stock options will further decrease once the "grandfathering" period ends in November 2008.

15. Both before and after the demotion, Defendant failed to select Crawley for numerous upper management positions, including those in the B7, B8 and X3 pay grades, filling these positions with less qualified white individuals. At all times relevant, these higher management positions were subject to Defendant's Management Incentive Plan.

16. Crawley indicated his interest in numerous positions, including several Vice President, Assistant Vice President, General Manager and Assistant General Manager positions. Defendant failed to award any of these positions to

Crawley, several of which occurred soon after Crawley filed his Charge of Discrimination. Furthermore, after Crawley filed his EEOC Charge of Discrimination, Defendant has also failed to even notify Crawley when openings for these positions occurred.

17. Among the specific positions Defendant denied Crawley were General Manager and Assistant General Manager positions for Defendant's Northern Region, located in Harrisburg, Pennsylvania. Defendant awarded these positions to white employees Bob Bartle in 2005 and Emory Hill in 2006, respectively. Crawley had superior qualifications as compared to Bartle and Hill.

18. Defendant does not post its selection criteria for positions that are subject to its Management Incentive Plan. Instead, such positions are filled through a secretive, subjective, and entirely discretionary "tap on the shoulder" system, administered by personnel in Defendant's senior management. At all times relevant to this action, Defendant's senior management has been disproportionately made up of white employees.

19. Crawley also received discriminatory yearly pay raises during his employment, including but not limited to annual raises awarded in 2005 and 2006.

20. In 2005, despite his Division's record-setting performance in the previous year which earned Crawley, as Division Superintendent, an award from Defendant's Chief Executive Officer, Defendant only awarded Crawley a four

percent raise. Several white employees in Division Superintendent positions received a higher percentage raise, despite Crawley's recognized superior performance.

21. In 2006, despite the fact that Defendant's Columbus, Ohio operations, under Crawley's supervision, were the best in Defendant's system with regard to performance, service and cost, Crawley received a four percent raise. Crawley's direct supervisor had initially recommended a six percent raise for Crawley, but this request was reduced by someone in upper management. This was Crawley's first opportunity to receive an annual merit raise following his filing of an EEOC Charge of Discrimination. Upon information and belief, similarly situated white employees with poorer performance records, as well as similarly situated employees who did not engage in protected activities, received higher annual raises than Crawley.

22. As a result of Defendant's discriminatory and retaliatory actions, Plaintiff has suffered emotional and economic harm.

VI. CAUSES OF ACTION

COUNT ONE
(Discrimination on the Basis of Race in Violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.*)

23. Crawley restates and realleges paragraphs 1 through 22 as though set forth here in full.

24. Defendant has discriminated against Crawley on the basis of his race with respect to the terms and conditions of his employment in violation of Title VII, including, but not limited to, unlawful discipline, compensation, and denials of promotions.

25. Defendant's conduct has been disparate, intentional, deliberate, willful, and conducted in callous disregard of Crawley's civil rights.

26. By reason of the continuous nature of Defendant's discriminatory conduct pertaining to Crawley's compensation, Crawley is entitled to application of the continuing violation doctrine to such claims.

27. As a result of Defendant's discrimination, Crawley has suffered emotional and economic harm.

28. By reason of Defendant's discrimination, Crawley is entitled to all legal and equitable remedies available under 42 U.S.C. § 2000e, *et seq.*, including, but not limited to, declaratory and injunctive relief; back pay; front pay; nominal, compensatory, and punitive damages; placement into a position he would be holding but for Defendant's discriminatory conduct; and any other legal or equitable relief as the Court deems appropriate..

COUNT TWO
(Discrimination on the Basis of Race in Violation of the Civil Rights Act of 1866, as amended, 42 U.S.C. § 1981)

29. Crawley restates and realleges paragraphs 1 through 22 as though set forth here in full.

30. Defendant has discriminated against Plaintiff on the basis of his race by denying him the same rights as are enjoyed by white persons in the making, performance, and modification of his contracts, specifically regarding his employment relationship with the Defendants and the enjoyment of all benefits, privileges, terms and conditions of that relationship, in violation of § 1981.

31. Defendant's conduct has been intentional, deliberate, willful, and conducted in callous disregard of Crawley's civil rights.

32. By reason of the continuous nature of Defendant's discriminatory conduct pertaining to Crawley's compensation, Crawley is entitled to application of the continuing violation doctrine to such claims.

33. As a result of Defendant's discrimination, Crawley has suffered emotional and economic harm.

34. By reason of Defendant's discrimination, Crawley is entitled to all legal and equitable remedies available under § 1981, including, but not limited to, declaratory and injunctive relief; back pay; front pay; nominal, compensatory, and punitive damages; placement into a position he would be holding but for

Defendant's discriminatory conduct; and any other legal or equitable relief as the Court deems appropriate.

COUNT THREE
(Retaliation in Violation of the Civil Rights Act of 1866, as amended, 42 U.S.C. § 1981)

35. Crawley restates and realleges paragraphs 1 through 22 as though set forth here in full.

36. Crawley engaged in protected activity by filing a Charge of Discrimination with the Equal Employment Opportunity Commission.

37. In retaliation against Crawley's exercise of his right to file a charge of discrimination challenging Defendant's racially discriminatory practices and conduct, Defendant failed repeatedly to promote Plaintiff and failed to compensate Plaintiff properly in light of his job performance and the compensation provided to individuals who did not engage in protected activity.

38. Defendant's conduct has been intentional, deliberate, willful, and conducted in callous disregard of Crawley's civil rights.

39. As a result of Defendant's retaliation, Plaintiff has suffered emotional and economic harm.

40. By reason of Defendant's illegal retaliation, Plaintiff is entitled to all equitable and legal remedies available under § 1981, including, but not limited to, declaratory and injunctive relief, back pay, front pay, nominal, compensatory, and

punitive damages, and placement into a position he would have held but for Defendant's retaliatory conduct.

VII. PRAYER FOR RELIEF

41. Wherefore, the Plaintiff requests the following relief:

A. A declaratory judgment that the Defendant's conduct challenged herein is illegal and in violation of Title VII of the 1964 Civil Rights Act, as amended, 42 U.S.C. § 2000e, *et seq.*, and the Civil Rights Act of 1866, as amended, 42 U.S.C. § 1981;

B. A permanent injunction against Defendant and its partners, officers, owners, agents, successors, employees, and representatives, and any and all persons acting in concert with them, from engaging in any further unlawful racial discrimination by the Defendant, as set forth herein;

C. An Order requiring Defendant to place immediately Crawley into a position he would be holding but for the discriminatory denials of promotions, and to adjust his wage rate and seniority accordingly;

D. An Order directing Defendant to restore all employee benefits to Crawley to the level that he would be enjoying but for Defendant's discriminatory and retaliatory conduct;

E. An award of back pay and lost benefits;

F. An award of nominal, compensatory, and punitive damages; and other damages for losses suffered by Crawley;

G. An award of litigation costs and expenses, including reasonable attorneys' fees;

H. Pre-judgment interest;

I. Such other and further relief as the Court may deem just and proper, and;

J. Retention of jurisdiction by the Court until such time as the Court is satisfied that the Defendant has remedied the violations complained of herein.

VIII. JURY DEMAND

42. Crawley demands a trial by jury of all issues triable of right to a jury.

Dated: April 27, 2007

/s/ Frank P. Clark .
Frank P. Clark (PA Bar No. 35443)
CLARK & KREVSKY, LLC
P.O. Box 1254
Camp Hill, PA 17001-1254
(717) 731-8600
email: fpc@Clark-Krevskylaw.com

Lori B. Kisch (DC Bar No. 491282)
Keir S. Bickerstaffe (DC Bar No. 495525)
WIGGINS, CHILDS, QUINN & PANTAZIS, PLLC
2031 Florida Avenue, N.W., Suite 300
Washington, D.C. 20009
(202) 467-4123
(202) 467-4489 (facsimile)

ATTORNEYS FOR THE PLAINTIFF